

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Houston, TX, Employer**

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**Docket No. 12-813  
Issued: February 20, 2013**

*Appearances:*

*Stephen V. Hunt, Sr., Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 29, 2012 appellant, through counsel, filed a timely appeal from a January 12, 2012 decision of the Office of Workers' Compensation Programs (OWCP) concerning the termination of her compensation benefits. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly terminated appellant's compensation for wage-loss and medical benefits effective September 26, 2010 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury; and (2) whether she had any continuing employment-related residuals or disability after September 26, 2010.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The record reveals that appellant filed an occupational disease claim on January 26, 2011 alleging that her emotional condition was employment related. OWCP has not issued a final decision on this claim. Thus, the Board lacks jurisdiction to address this issue on appeal 20 C.F.R. § 501.2(c); *see E.L.*, 59 ECAB 405 (2008); *Linda Beale*, 57 ECAB 429 (2006) (the Board's jurisdiction extends only to the review of final decisions by OWCP).

On appeal appellant's counsel contends that OWCP erred in its termination findings.

### **FACTUAL HISTORY**

On August 3, 2009 appellant, then a 44-year-old distribution clerk, filed a traumatic injury claim alleging that on July 29, 2009 she injured her backside in the performance of duty. OWCP accepted the claim for back contusion, lumbar sprain and left lumbosacral neuritis or radiculitis.

OWCP received various progress notes and duty status reports (Form CA-17) from Dr. Charles K. Speller, an attending physician, diagnosing lumbar radiculopathy and opining that appellant was totally disabled. Dr. Speller related that appellant sustained lumbar and lower back injuries at work on July 29, 2009. Based on the physical findings provided in the progress notes and history of the employment injury, he concluded that she was temporarily totally disabled from working.

In a March 11, 2010 report, Dr. Robert A. Fulford, a second opinion Board-certified orthopedic surgeon, diagnosed lumbar degenerative disc disease and resolved lumbosacral sprain. A physical examination and review of magnetic resonance imaging (MRI) scans was performed with the MRI scan review revealing desiccated discs at L3-4 and L4-5, disc height loss and bilateral facet joint arthropathy. Based on appellant's physical examination and review of diagnostic studies, Dr. Fulford opined that there was no evidence of any disabling condition. He attributed her delay in returning to work to her underlying lumbar degenerative disc disease which is not caused by trauma. Dr. Fulford noted that appellant sustained a lumbar contusion and lumbar sprain/strain which should have resolved in less than 12 weeks. In concluding, he opined that her July 29, 2009 employment injury did not prevent her from returning to her date-of-injury position.

On April 29, 2010 OWCP referred appellant to Dr. Frank L. Barnes, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Charles K. Speller, an attending physician, and Dr. Fulford, an OWCP referral physician, on the issues of residuals and continuing disability. The February 2, 2010 statement of accepted facts noted the history of the injury, the duties of her position and that the claim had been accepted for lumbar back sprain and left-side lumbosacral neuritis or radiculitis. OWCP noted that a prior claim accepted that appellant sustained a back sprain as the result of a June 22, 2000 employment injury.

On June 3, 2010 Dr. Barnes diagnosed lumbar contusion and congenital genu valgus. A physical examination revealed no list or spasm or rigidity. There was left lumbar tenderness. Appellant showed painless straight leg raising to 90 degrees. Supine straight leg raising was painful in the lower back and left lower extremity. Dr. Barnes found these results inconsistent and did not represent radiculopathy. He opined that appellant's lumbar condition did not preclude her from working and that her injury had resolved. Dr. Barnes stated that soft tissue injuries normally resolve within six to eight weeks and her physical findings do not show any evidence of structural damage and there were two findings of possible symptom magnification. He opined that appellant was capable of working an eight-hour day as there was no objective evidence supporting any disability. Dr. Barnes recommended a gradual return to work.

In response to OWCP's request for clarification, Dr. Barnes submitted a June 17, 2010 supplemental report stating that his recommendation for a gradual return to work was based on appellant's being out of condition and due to length of time that she had been disabled from working.<sup>3</sup>

On August 3, 2010 OWCP issued a notice proposing to terminate appellant's compensation benefits based upon the report of Dr. Barnes, the impartial medical examiner.

Subsequently, OWCP received a July 25, 2010 supplemental report from Dr. Barnes stating that he recommended a gradual return to work based on appellant's being out of condition due to length of time she had not been working.

By decision dated September 3, 2010, OWCP finalized the termination of appellant's compensation benefits effective September 26, 2010. It found that the opinion of Dr. Barnes, the impartial medical examiner, constituted the special weight of the evidence.

Following the termination of appellant's benefits, OWCP received various reports, progress notes and duty status reports from Dr. Speller reiterating his position that appellant continued to be disabled due to her accepted lumbar conditions.

In a letter dated September 15, 2010, appellant's counsel requested that OWCP rescind its notice proposing to terminate her compensation due to procedural errors by OWCP. He also argued that the reports of Dr. Barnes should be excluded from the record.

On October 5, 2010 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated November 2, 2010, OWCP denied appellant's request for review of the written record by an OWCP hearing representative as the request was untimely.

Following the denial of appellant's request for a written review of the record, OWCP received duty status forms and reports from Dr. Speller reiterating his findings and opinion that appellant continued to be temporarily totally disabled as a result of the lumbar injuries sustained on July 29, 2009.

On January 26, 2011 appellant's counsel requested reconsideration.

By decisions dated September 20, 2011, OWCP denied modification.

On October 21, 2011 OWCP received a September 9, 2011 report from Dr. Ronnie B. Shade, a treating Board-certified orthopedic surgeon, who diagnosed lumbar strain, left lower extremity radiculitis, L4-5 and L5-S1 disc protrusion. Dr. Shade opined that appellant continued to be disabled due to the injuries she sustained as a result of the accepted July 29, 2009 employment injury.

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<sup>3</sup> The date of the letter is June 17, 2011. This appears to be a typographical error as this letter was received by OWCP on July 29, 2010.

OWCP received an addendum to Dr. Shade's September 9, 2011 report on November 11, 2011 in which he determined that appellant's emotional problems were directly related to her accepted employment injury and were impeding her recovery.

By decision dated November 18, 2011, OWCP denied modification.

On November 23, 2011 OWCP received an April 23, 2011 report from Dr. Shayna P. Lee, a Board-certified psychiatrist, who noted that appellant sustained an employment injury on July 29, 2009 which resulted in injuries to appellant's lower back, lower extremities and knees. Dr. Lee noted that appellant had filed prior claims for repetitive motion injury to both shoulders and carpal tunnel syndrome and had returned to work following her prior injuries. Following her return to work from her prior injuries appellant related being subjected to verbal and mental insults from supervisors and coworkers and related being made to feel worthless and helpless. She reported crying spells, irritability, poor sleep, increased appetite with weight gain, panic and forgetfulness. Dr. Lee diagnosed major depression and chronic pain disorder which the doctor attributed to appellant's July 29, 2009 employment injury. She also concluded that appellant was totally disabled from working.

On December 29, 2011 OWCP received duty status reports dated October 22 and December 16, 2011 indicating that appellant was totally disabled and narrative reports dated October 28 and December 16, 2011 from Dr. Shade reiterating that appellant was disabled.

On December 30, 2011 appellant's counsel requested reconsideration.

By decision dated January 12, 2012, OWCP denied modification.

### **LEGAL PRECEDENT -- ISSUE 1**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>4</sup> After it has determined that an employee has disability causally related to his or her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>8</sup>

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<sup>4</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>5</sup> *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>8</sup> *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits effective September 26, 2010. The accepted conditions are back contusion, lumbar sprain and left lumbosacral neuritis or radiculitis. OWCP determined that a conflict in medical evidence had been created between the opinions of appellant's treating physician, Dr. Speller and Dr. Fulford, an OWCP referral physician, regarding whether appellant had residuals of the accepted conditions. It referred appellant to Dr. Barnes, Board-certified in orthopedic surgery, for an impartial medical evaluation.

Dr. Barnes conducted an impartial medical examination on June 3, 2010 as well as reviewing appellant's history of injury and medical history. He diagnosed lumbar contusion and congenital genu valgus. Dr. Barnes' extensive review of the medical records led him to opine that her accepted injury had resolved and that her lumbar condition did not preclude her from working. In support of this conclusion, he related that soft tissue injuries normally resolve within eight weeks and her physical findings did not show any evidence of structural damage. Dr. Barnes also found two findings reflecting symptom magnification. He concluded that there was no objective evidence supporting any disability and that appellant was capable of working an eight-hour day. In a supplemental report, Dr. Barnes stated that he recommended a gradual return to work due to appellant's being out of condition and the length of time she had been disabled from working.

The Board finds that Dr. Barnes' report was entitled to the special weight of the medical evidence. Dr. Barnes' report is based on a proper factual history, provided findings and included medical reasoning, supporting his conclusions. The Board finds that OWCP met its burden of proof to terminate appellant's compensation and medical benefits.

### **LEGAL PRECEDENT -- ISSUE 2**

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

Following OWCP's September 3, 2010 termination of appellant's compensation and medical benefits effective September 26, 2010 appellant's counsel requested reconsideration and submitted additional new evidence consisting of reports from Drs. Shade, Speller and Lee.

Dr. Speller submitted additional reports and progress notes in support of appellant's claim for total disability and medical residuals following the termination of her compensation benefits. He reiterated his findings and opinion that she continued to be temporarily totally disabled as a result of the lumbar injuries sustained on July 29, 2009. As Dr. Speller was on one side of a conflict which was resolved by Dr. Barnes and his reports do not otherwise provide new

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<sup>9</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

findings or medical rationale, Dr. Speller's reports are insufficient to establish there are any continuing conditions or residuals due to the accepted July 29, 2009 work injury.<sup>10</sup>

Appellant also submitted reports from Dr. Shade noting a July 29, 2009 employment injury, physical findings and diagnosing a lumbar strain, lower extremity radiculitis, L4-5 and L5-S1 disc protrusions. However, OWCP has not accepted the conditions of L4-5 and L5-S1 disc protrusion.<sup>11</sup> In addition, Dr. Shade's reports are of diminished probative value because he has not provided any supporting rationale explaining how her condition was a result of her accepted employment injury. The Board has held opinions unsupported by rationale are entitled to little probative value.<sup>12</sup> Therefore, Dr. Shade's reports are insufficiently rationalized to outweigh Dr. Barne's opinion or create a conflict of medical opinion.

Appellant also submitted a report from Dr. Lee which described appellant's injury on July 29, 2009 and the resulting pain in her lower extremities, knees and lower back. Dr. Lee reported appellant's symptoms upon return to work as well as her additional work factors of being ostracized at work and mistreated through comments on her limitations. Appellant stated that verbal insults were made by supervisors and coworkers and she was being made to feel worthless and helpless. Dr. Lee diagnosed chronic pain disorder and major depressive disorder, which she attributed to the July 29, 2009 employment injury and that appellant was currently totally disabled.

OWCP has not accepted appellant's claim for an emotional injury. Where a claimant claims that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the injury through the submission of rationalized medical evidence.<sup>13</sup>

The Board notes that Dr. Lee and appellant described a history of an emotional condition predating her July 29, 2009 employment injury and described symptoms and events which occurred during the period that she was working light duty before she stopped work due to the July 29, 2009 injury. While Dr. Lee concluded that appellant's diagnosed emotional conditions and resulting disability were due to her July 29, 2009 employment injury, she did not provide adequate medical reasoning to support her stated conclusions. In her report, she appeared to attribute appellant's emotional condition to her previous injuries and return to work and then concluded, without explanation, that the emotional conditions were due to her most recent injury. Without a clear explanation of how and why she reached her final conclusion, Dr. Lee's report is not sufficient to meet appellant's burden of proof in establishing an emotional condition due to her July 29, 2009 employment injury.

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<sup>10</sup> See *I.J.*, 59 ECAB 408 (2008); *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>11</sup> *Charles W. Downey*, 54 ECAB 421 (2003); *Alice J. Tysinger*, 51 ECAB 638 (2000) (for conditions not accepted by OWCP as being employment related, it is the employee's burden to provide rationalized medical evidence sufficient to establish causal relation, not OWCP's burden to disprove such relationship).

<sup>12</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>13</sup> *M.D.*, Docket No. 11-1737 (issued April 3, 2012); *F.H.*, Docket No. 10-1267 (issued March 7, 2011); *JaJa K. Asaramo*, 55 ECAB 200, 214 (2004).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits and that she has failed to meet her burden of proof in establishing any continuing disability or medical residuals on or after September 26, 2010.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 12, 2012 is affirmed.

Issued: February 20, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board